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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7 IN THE MATTER OF:

Supreme Court No. R-10-0031

8 PETITION TO AMEND ER 8.4,
9 RULE 42, ARIZONA RULES OF
10 THE SUPREME COURT
11

**Comment to Petition to Amend ER 8.4,
Rule 42, Arizona Rules of the Supreme
Court**

12 The undersigned attorney hereby comments to the Petition to Amend ER
13 8.4, Rule 42, Arizona Rules of the Supreme Court. The State Bar of Arizona has
14 petitioned this Court to amend ER 8.4, Rule 42, Arizona Rules of the Supreme
15 Court, by adding the following language: “It is professional misconduct for a
16 lawyer to knowingly manifest bias or prejudice based upon race, gender, religion,
17 national origin, disability, age, sexual orientation, gender identity or expression,
18 or socioeconomic status in the course of representing a client when such actions
19 are prejudicial to the administration of justice; provided, however, this does not
20 preclude legitimate advocacy when such classification is an issue in the
21 proceeding.”
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25 While I do agree with the July 15, 2011, Petition filed by Alliance Defense
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1 Fund and its undersigned attorneys, I am compelled to elaborate briefly on the
2 impact of the proposed rule change. My chief concern rests with this rule
3 correcting a non-existent issue. In fact, the opposite is true; by seeking a more
4 expansive definition of “misconduct”, this court treads close First Amendment
5 rights held by numerous practicing attorneys here in Arizona.
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8 First, it appears from the State Bar Petition filed on June 15, 2010 that a
9 significant basis for the proposed amendment rests on the proposition that because
10 Arizona has codified this change to *other* rules, it should therefore be codified in
11 *this* rule. Noticeable absent is any showing of a particular need to amend the rule in
12 the proposed manner.
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14 Further, implementing the rule could lead to very real consequences to those
15 practicing in law. Changing this rule would open the door to complaints against
16 practicing attorneys concerned by a potential bar complaint. I do not believe it is
17 outside the realm of possibility that an attorney, having reached a conclusion on the
18 merits of a case may be subject to a bar complaint by a disgruntled client that
19 alleges discrimination based on any of the number of issues; but those issues are
20 greatly (and unduly) expanded with this new rule.
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23 For instance, a disappointed client unhappy after court proceeding could very
24 well complain that the lawyer cared less for the client’s case because the client was
25 a homosexual and learned that the attorney carried and practiced deeply rooted
26

1 religious beliefs. Certainly, the outcome of a bar complaint would gain little
2 traction, but the *spectre* of such an event would have a chilling effect on how
3 lawyers interact with clients.
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5 The proposed rule change amendment does little, if anything to correct an
6 articulated problem; it instead raises the possibility that attorneys could be subject
7 to State Bar inquiry on a larger scope than ever before in the past. For the
8 foregoing reasons, I oppose the State Bar's proposed amendments to the Arizona
9 Rules of the Supreme Court.
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13 Respectfully submitted this 1st day of November 2011.
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16 /s/ **Benjamin R. Eid**

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22 Electronic copy filed with the Clerk
23 of the Supreme Court of Arizona
24 this 1st day of November, 2011,
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